

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4608 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 02.08.2017 in I.A.No.766 of 2012 in O.S.No.584 of 2009 passed by I Additional Senior Civil Judge, Rajamahendravaram, whereby the petition filed by the petitioner herein/defendant No.11 to decide the territorial jurisdiction of the Court to try the suit in respect of part of B Schedule Property, which is situated outside the jurisdictional limits of the Senior Civil Judge at Kakinada, was dismissed.

The petitioner herein filed Petition under Order 14 Rule 2 CPC, to try and decide the territorial jurisdiction as preliminary issue before proceeding trial, alleging that the petitioner entered into appearance on receipt of Notice in a Petition filed under Order 1 Rule 10 CPC i.e., I.A.No.928 of 2011. After impleading him as Defendant No.11, he filed Written Statement raising a specific contention that the part of 'B' Schedule property, consists of 6,602 sq.yards out of 10,553 sq.yards is situated at Kakinada, was purchased by him under a Registered Sale Deed Dt. 28.02.2011 and since then he is in possession and enjoyment of the property and constructed a compound wall by fixing a gate on North-Eastern side as a Managing Partner of Defendant No.11. Defendants Nos. 1 to 4 are the partners of plaintiff No.1 firm, who are the majority shareholders of 'B' schedule property having 80% share in it. 'B' schedule property is an extent of 10.553 sq.yards covered by S.No.158 part and 154 part situated at Kakinada. The majority partners i.e., defendant Nos. 1 to 4 are having 80% share which includes 8,442 sq.yards, whereas, the plaintiff No.1 firm is the owner of three cinema halls at Rajahmundry viz., Ramba,

Urvasi and Menaka and they are completely in a neglected state and failed to yield any good income in view of the failure of plaintiff No.2 to attend to the development of the cinema halls in tune with the present demands of cinegoers and cinema theatre business being a highly competitive business demanding the cinema theatres to be equipped with latest technology in all respects.

Plaintiff No.1 firm is not having sufficient funds to meet the required amount for development. Under those circumstances, the defendant Nos. 1 to 4 proposed to sell away 6,602 sq.yards out of 8,442 sq.yards with a shed. Therefore, the petitioner became the owner of the property by virtue of the purchase.

'B' Schedule Property is situated outside i.e., Kakinada, East Godavari District, but the suit is filed before the Senior Civil Judge at Rajahmundry and therefore, the Senior Civil Judge, Rajahmundry, lacks territorial jurisdiction and Section 17 of the CPC has no application since 'B' schedule property is situated at Kakinada, hence, requested to frame an issue regarding territorial jurisdiction to try the suit filed before the Senior Civil Judge, Kakinada, in respect of part of 'B' schedule property and try the same as a preliminary issue exercising power under Order 14 Rule 2 CPC.

The respondent No.2/plaintiff No.2 filed counter denying the material allegations while admitting filing of suit and impleading the petitioner etc., He specifically contended that according to Section 17 of CPC, where a suit is filed to obtain in respect of immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court of any part of the property situated, provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court. According to Section 20 of CPC, every suit shall be instituted in a Court within the local limits of whose jurisdiction, the

defendant, or each of the defendants where there are more than one at the time of commencement of the suit actually and voluntarily resides or carries on business or personally works for gain or the cause of action in part only arises. In the present facts of the case, 'A and B' Schedule properties are the subject matter of the suit and part of 'B' schedule is situated within the jurisdictional limits of the Senior Civil Judge, Kakinada. But still, according to Section 17 of CPC, the Court at Rajahmundry is competent to try the suit though the 'B' schedule property is situated outside the Court and the Senior Civil Judge, Rajahmundry is still competent to try the suit.

It is further contended that in I.A.No.928 of 2011 in a petition filed under Order 1 Rule 10 CPC to implead him as defendant, the petitioner raised the same contention and the Court recorded its finding as to the territorial jurisdiction and therefore, the plea of territorial jurisdiction is already decided and thereby the Court need not frame an issue relating to territorial jurisdiction again and try the same as a preliminary issue exercising power under Order 14 Rule 2 CPC.

The trial Court, upon hearing both the counsel, passed the impugned Order and extracted the finding recorded in I.A.No.928 of 2011 in a petition filed under Order 1 Rule 10 CPC for impleadment of the petitioner as a defendant to the suit and on the basis of such finding, the Court dismissed the petition.

The present Revision Petition is filed contending that the finding recorded in I.A.No.928 of 2011 filed under Order 1 Rule 10 CPC is unwarranted and though the finding was recorded as stated above, it was not an issue before the trial Court in a petition filed under Order 1 Rule 10 CPC and therefore, the findings already recorded in I.A.No.928 of 2011 will not come in the way to decide the issue when the Court committed

serious error in dismissing the petition based on the findings recorded in a Petition filed under Order 1 Rule 10 CPC and requested to set aside the order passed by the trial Court.

During hearing, Sri V. Venkataramana, learned Senior Counsel appearing for the petitioner reiterated the contentions urged in the petition while submitting that when a petition is filed under Order 1 Rule 10 CPC, the scope is limited though a contention was urged in the Counter filed by this petitioner incidentally touching the jurisdiction of part of the property in question in the suit, still the Court is not expected to record its findings when it was not an issue before the Court and such finding cannot operate as *res judicata* since no issue was framed. Therefore, the petitioner is not estopped to raise such contention. It is also contended that the trial Court did not advert to the pleadings i.e., affidavit filed along with the petition filed by the petitioner and the Counter filed by the respondents and simply dismissed the petition extracting the portion of the Order in I.A.No.928 of 2011 filed under Order 1 Rule 10 CPC. The Order under challenge is erroneous and unreasoned on the face of the record, therefore the Order of the trial Court is liable to be set aside.

Whereas Sri D. V. Seetharamamurthy, learned Senior Counsel appearing for the respondents contended that though a finding was recorded with regard to territorial jurisdiction to try the suit for the property situated outside the jurisdiction of the Court in a petition filed under Order 1 Rule 10 CPC, which attained finality, as it was not assailed before this Court or any other Court and such finding operates as *res judicata* and therefore, the petitioner is not entitled to claim relief under Order 14 Rule 2 CPC and placed reliance on a judgment reported in *Arjun Singh v*

*Mohindra Kumar and others*¹ and requested this Court to dismiss the petition by applying the principle laid down in the above judgment.

On considering rival contentions of both sides, the point that arise for consideration is:

Whether the findings recorded in I.A.No.928 of 2011 filed under Order 1 Rule 10 CPC operates as *res judicata* and debarred the petitioner to claim relief under Order 14 Rule 2 CPC ?

POINT: During pendency of the suit, this petitioner was impleaded by Order dt. 05.01.2011 in I.A.No.928 of 2011. “ The reliefs claimed in the suit are four in number and the relief regarding ‘B’ schedule property is only to grant permanent injunction against the defendants and their representatives and agents from ever interfering with second plaintiff Management and control of B Schedule Property, to declare that the alienation made by defendant Nos. 1 to 4 in favour of defendant No.11 under registered sale deed dt. 28.02.2011 covering an extent of 6602 sq. yards of site out of ‘B’ schedule property is invalid and inoperative under law and not binding on the plaintiffs. Clause 5 (a) is added as per Order in I.A.No.54 of 2014, dt.02.08.2017. Thus, the petitioner claimed relief in respect of ‘A and B’ schedule property, but ‘A’ schedule property, consisting of three cinema theatres, are within the territorial jurisdiction of the Senior Civil Judge, Rajamundry. Whereas, the ‘B’ schedule property is outside the territorial jurisdictional limits i.e., at Kakinada, but the entire property belongs to the firm, which consists of plaintiff Nos. 1 and 2 and defendant Nos. 1 to 4. But, the defendant Nos. 1 to 4 sold part of the ‘B’ property, who are the major shareholders i.e., 80 %, to the petitioner herein/Defendant No.11.

¹ AIR 1994 SC 993

Nodoubt, when the petitioner raised a specific issue as to the territorial jurisdiction in the Counter filed in I.A.No.928 of 2011 filed under Order 1 Rule 10 CPC, the Court is not supposed to decide such an issue of territorial jurisdiction in a petition filed under Order 1 Rule 10 (2) CPC. The Scope of Order 1 Rule 10 (2) CPC is limited and at best, the Court is required to decide whether the proposed party is necessary or property party in whose absence the suit cannot be adjudicated finally and effectually or whether the suit can be decided completely though no relief is claimed against such party. The jurisdiction of the Court under Order 1 Rule 10 CPC is limited. But, in view of specific plea raised for want of territorial jurisdiction of the Senior Civil Judge, the Senior Civil Judge, Rajahmundry, incidentally recording a finding regarding territorial jurisdiction and such finding would not operate as *res judicata*, though it attained finality, since, it was not an issue before the Court in a petition filed under Order 1 Rule 10 CPC.

Section 11 of CPC deals with Principles of *res judicata*, which is based of a public policy to put an end to the litigation at one stage or the other. When a petition under Order 1 Rule 10 (2) CPC is filed to implead, but instead of confining its decision under Order 1 Rule 10 (2) CPC, the trial Court exceeding the scope of enquiry of Order 1 Rule 10 CPC recorded a finding that the Senior Civil Judge, Kakinada, vested with the jurisdiction to try the suit in respect of 'B' schedule property also. Order 14 (1) CPC deals with the issues. According to it, issues are two types viz., Issue of fact and Issue of law. The question of framing issue would arise when the material proposition of law or fact is affirmed by one party and denied by the other party. The material propositions are those propositions of law or fact, which the plaintiff must alleged in order to constitute his defence. Therefore, each material proposition, affirmed by one party and denied by the other, shall form the subject of distinct issues either

issue of fact or issue of law. Framing of an issue under Order 14 Rule (4) 1 CPC, the Court has to frame issue confining the pleadings depending upon the nature of the dispute before the Court. No issue of fact or law can be framed unless such proposition of fact or law is affirmed by one party and denied by other. Here, the petitioner being the respondent filed a petition under Order 1 Rule 10 CPC, asserted that the Senior Civil Judge at Rajahmundry, lacks territorial jurisdiction, but there was no denial. In such a case, the Senior Civil Judge is not supposed to record a finding, but committed an error exceeding its power in recording such finding in a petition filed under Order 1 Rule 10 CPC. Therefore, such finding as to the jurisdiction, which is not the subject matter in a petition filed under Order 1 Rule 10 CPC, cannot be said to be the finding based on the issue since it was not the issue framed before the Court. In such circumstances, dismissal of the petition on the basis of such finding and scope of the suit etc., alone cannot be the ground to reject the relief claimed by the petitioner under Order 14 Rule 2 CPC.

Though the counsel for the petitioner placed reliance on a judgment reported in *Arjun Singh's* case referred supra, the legal proposition laid down therein is not in dispute. But, when there was an issue and recorded a finding, which attained finality on merits, it would certainly estopps this petitioner to raise such contention in the subsequent proceedings by applying the doctrine of issue estoppel or the principle of *res judicata*, but here, no issue was framed under the Order passed by the Senior Civil Judge, Rajamanhendravaram, but exceeded the scope of enquiry in a petition filed under Order 1 Rule 10 CPC, such order cannot be the basis of denial of relief.

Yet, another serious lacuna in this Order is that before the Senior Civil Judge, the petitioner raised several contentions regarding the territorial jurisdiction and the respondent also drawn the attention of the

Court to various provisions i.e., Section 17 and 20 of CPC, which deals with territorial jurisdiction of the Court, but the Court did not advert to any of the contentions and simply extracted the finding recorded in a petition No.928 of 2011 filed under Order 1 Rule 10 CPC and dismissed the petition. Therefore, the Order passed by the Court is cryptic and without any reasons and therefore, such Order cannot be sustained under law. Hence, the Order dt.02.08.2017 in I.A.No.766 of 2012 passed by the Senior Civil Judge Rajamahendravaram, is hereby set aside while remanding the petition to the trial Court as the jurisdiction of this Court is limited under Article 227 of the Constitution.

In the result, this Civil Revision Petition is allowed setting aside the Order dt. 02.08.2017 in I.A.No.766 of 2012 in O.S.No.584 of 2009 on the file of I Additional Senior Civil Judge, Rajamahendravaram and decide the petition afresh after affording reasonable opportunity to both parties and pass reasoned order considering the contentions raised by both the parties. The findings or observations made hereinabove will not come in the way to decide the petition afresh and therefore, the Senior Civil Judge, Rajamahendravaram, is directed to pass appropriate Orders in accordance with law, uninfluenced by the findings or observations made in the order, independently. As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06-11-2018

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